

OIL & GAS DOCKET NO. 20-0239494

APPLICATION OF SUSANA HAHN AND CATHY GUERRA TO CONSIDER REMOVAL OF THEIR PERMITTING DISQUALIFICATIONS UNDER TEXAS NATURAL RESOURCES CODE §91.114, RESULTING FROM THEIR ASSOCIATION WITH CORE E & P CORP.

APPEARANCES:

FOR APPLICANTS:

Philip Patman
Susana Hahn
Cathy Guerra

FOR INTERVENOR:

Reese Copeland, Staff Attorney
Enforcement Section
Railroad Commission of Texas

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR HEARING:

June 15, 2004

DATE OF NOTICE OF HEARING:

July 16, 2004

DATE OF HEARING:

August 5, 2004

HEARD BY:

James M. Doherty, Hearings Examiner

PFD CIRCULATION DATE:

August 24, 2004

STATEMENT OF THE CASE

This is a hearing called at the request of Susana Hahn and Cathy Guerra to consider removal of their permitting disqualifications under Texas Natural Resources Code §91.114, resulting from their former association with Core E & P Corp. (“Core”).¹ Susana Hahn and Cathy Guerra also request that their names be removed from Commission records as officers of Core.

¹ It appears that Core’s legal name is Core Exploration & Production Corporation. The name was shortened for the purposes of the Commission’s records to accommodate limitations of the Commission’s computer system.

A hearing was held on August 5, 2004. Susana Hahn and Cathy Guerra appeared in person and through counsel and presented evidence. Reese Copeland, Staff Attorney, appeared to represent the Enforcement Section of the Commission's Office of General Counsel.

APPLICABLE LAW

Texas Natural Resources Code §91.114 provides that the Commission may not accept an organization report or an application for a permit under Chapters 85 and 91 of the Texas Natural Resources Code, or Chapters 26, 27, or 29 of the Texas Water Code, or approve a certificate of compliance under Texas Natural Resources Code §85.161 for an organization if a person who holds a position of ownership or control in the organization has, within the seven years preceding the date on which the report, application, or certificate is filed, held a position of ownership or control in another organization which, during that period of ownership or control, violated a statute or Commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution.

An organization has committed a violation if: (1) a final judgment or final administrative order finding the violation has been entered against the organization and all appeals have been exhausted; or (2) the Commission and the organization have entered into an agreed order relating to the alleged violation.

Regardless of whether a person's name appears or is required to appear on an organization report, the person holds a position of ownership or control in an organization if: (1) the person is an officer or director of the organization, a general partner of the organization, the owner of an organization which is a sole proprietorship, the owner of at least 25% beneficial interest in the organization, or a trustee of the organization; or (2) the person has been determined by a final judgment or final administrative order to have exerted actual control over the organization.

The restrictions of Texas Natural Resources Code §91.114 do not apply if the violation which would otherwise trigger the restrictions has been corrected or is being corrected in accordance with a schedule to which the Commission and the organization have agreed and all penalties and cleanup and plugging costs associated with the violation have been paid or are being paid in accordance with a payment schedule to which the Commission and the organization have agreed.

BACKGROUND

Core last filed an approved Form P-5 Organization Report on November 9, 2001. This Form P-5 listed Core's officers as Michael Keith Hahn, President, Susana Hahn, Vice President, and Cathy Guerra, Secretary/Treasurer.

On September 22, 2003, the Commission signed a Final Order in Oil & Gas Docket No. 03-

0233966, *Enforcement Action for Alleged Violations Committed By Core E & P Corp. (178381) As To The Santa Fe Unit (07820) Lease, Well Nos. 7D and 7F, Stowell (6650) Field, and The Koch Santa Fe Unit (07833) Lease, Well No. 7H, Stowell (6700) Field, Jefferson County, Texas.* This Final Order concluded that Core had violated Statewide Rules 3(a) and 14(b)(2), rules relating to safety and the prevention or control of pollution. The Final Order required Core to plug the involved wells and pay an administrative penalty.

On December 22, 2003, the Commission signed a Final Order in Oil & Gas Docket No. 03-0235020, *Enforcement Action For Alleged Violations Committed By Core E & P Corp. (178381) As To The Steele-Schmucker Unit O/A (09019) Lease, Well No. 3H, Stowell (Stewart U-3) Field, Steele-Schmucker Unit O/A (21460) Lease, Well No. 3F, Stowell (Schmucker) Field, and The Koch, T. F. NCT-1 Lease, Well No. 4 (113052), Stowell (Englin-Marg) Field, Jefferson County, Texas.* This Final Order concluded that Core had violated Statewide Rules 3(a) and 14(b)(2), and ordered Core to plug the involved wells and pay an administrative penalty.

The examiner has officially noticed that Core has not corrected the violations found to have been committed in the above-referenced dockets and has not paid the administrative penalties assessed against Core.² The time for appeals from the final orders in these dockets has passed, and no appeals were filed. The examiner has also officially noticed that the Commission currently considers that Susana Hahn and Cathy Guerra are subject to the disqualifications of Texas Natural Resources Code §91.114, based on their former association with Core and the violations found to have been committed by Core in the above-referenced dockets.

DISCUSSION OF THE EVIDENCE

Susana Hahn is the former spouse of Michael Keith Hahn and sister to Cathy Guerra. Susana Hahn was associated with Core from the company's inception. Cathy Guerra was first associated with Core sometime in 1998. The examiner has officially noticed all Commission Form P-5 records for Core. Core was first organized as an operator with the Commission by Form P-5 filed on June 25, 1999.³

The last approved Form P-5 for Core was filed on November 1, 2001. It was signed by Cathy

² Exhibit No. 17 indicates that to date the Commission has expended \$207,000.00 in plugging Core's wells and that as of April 16, 2004, Commission staff was seeking Commission approval to spend another \$410,000.00 to plug 44 additional wells of Core. Another 100 Core wells remain, and Core's Bankruptcy Trustee has stated that no funds are available to the bankruptcy estate to address the plugging liability for these wells. Apparently, the Commission has collected \$250,000.00 from Core's financial assurance.

³ The first Form P-5 filed for Core indicated that Core Exploration & Production Corporation was a name change from Core Energy Corporation. Core Energy Corporation was first organized with the Commission on February 22, 1999. Susana Hahn was listed as Vice President on the Form P-5 filed by Core Energy Corporation.

Guerra and listed Michael Keith Hahn as President, Susana Hahn as Vice President, and Cathy Guerra as Secretary/Treasurer. A previous Core Form P-5 dated June 18, 2001, which was approved July 11, 2001, also listed Susana Hahn as Vice President and Cathy Guerra as Secretary/Treasurer. Susana Hahn and Cathy Guerra confirmed that they served in these official positions with Core at the time these Forms P-5 were filed. The examiner has officially noticed that Susana Hahn was also listed as Vice President of Core on Forms P-5 filed for Core on June 25, 1999, and July 25, 2000. The Forms P-5 filed for Core show that Cathy Guerra was first listed as an officer of Core on the Form P-5 signed on June 18, 2001, and filed on July 11, 2001. Susana Hahn was the sole stockholder of Core from the inception of the company.

In about September 2001, difficulties developed in the marriage of Susana Hahn and Michael Keith Hahn that in mid-2002 led to a divorce. Susana Hahn and Cathy Guerra decided to sever their association with Core. On December 15, 2001, both Susana Hahn and Cathy Guerra resigned as directors of Core. On the same date, Susana Hahn transferred all of the stock of Core to Michael Keith Hahn. Both the resignations as directors and the stock transfer are evidenced by minutes of a meeting of Core's shareholders held on December 15, 2001. In addition, Susana Hahn and Cathy Guerra testified that they resigned as officers of Core on December 15, 2001. Their resignations as officers are evidenced by copies of letters dated December 21, 2001, sent by Susana Hahn and Cathy Guerra to the State Comptroller notifying the Comptroller of the resignations. A mid-2002 divorce decree dissolving the marriage of Michael Keith Hahn and Susana Hahn included a division of property that awarded 100% of the stock of Core to Michael Keith Hahn.⁴

After resigning from Core, Susana Hahn started her own operating company, apparently Wild Cat Operating Company, and Cathy Guerra joined her in this endeavor. About 25 of the leases formerly operated by Core were transferred to Susana Hahn's new company. Susana Hahn and Cathy Guerra testified that after December 15, 2001, they had no further association with Core, with the exception that until early 2003, Cathy Guerra continued to do contract data processing work for Core, because Susana Hahn had been permitted to take with her a software package previously used by Core for data processing.⁵ Guerra was not, however, an employee or officer of Core after December 15, 2001.

The leases and wells which were the subject of the enforcement proceedings against Core in Oil & Gas Docket Nos. 03-0233966 and 03-0235020 were first transferred to Core by Forms P-4 (Producer's Transportation Authority and Certificate of Compliance) effective January 1, 2002, as evidenced by findings in the Final Orders in these dockets. The examiner has officially noticed the Forms

⁴ The evidence establishes that a transfer of all of the stock of Core from Susana Hahn to Michael Keith Hahn had already occurred on December 15, 2001.

⁵ On October 31, 2002, Cathy Guerra signed a Form P-2 (Producer's Monthly Report of Gas Wells) for Core and listed her title as "Production Accountant."

P-4 that accomplished these transfers to Core. In the case of all leases and wells involved in Oil & Gas Docket Nos. 03-0233966 and 03-0235020, the transfers to Core were approved on December 17, 2001⁶, and were effective January 1, 2002. Energy Reserves Group L.L.C. was the previous operator. All of the Forms P-4 transferring these leases and wells to Core were signed on behalf of Core by Keith Hahn, President, on December 6, 2001.

EXAMINER'S OPINION

The evidence shows that Susana Hahn was a person in a position of ownership or control of Core from at least February 22, 1999, until December 15, 2001. During this period, Susana Hahn was the owner of all of Core's stock and Vice President of Core, and its predecessor in name Core Energy Corporation.⁷ The evidence also shows that Cathy Guerra was a person in a position of ownership or control of Core from at least June 18, 2001, until December 15, 2001. Cathy Guerra was first listed as an officer of Core on a Form P-5 signed by Core's President on June 18, 2001, and filed July 11, 2001.⁸ The evidence is sufficient to establish that Susana Hahn and Cathy Guerra ceased to be an officer, director, and/or owner of Core effective December 15, 2001.⁹

The Final Orders against Core in Oil & Gas Docket Nos. 03-0233966 and 03-0235020 subject Susana Hahn and Cathy Guerra to the disqualifications of Texas Natural Resources Code §91.114 only if the violations found to have been committed by Core in those dockets were committed during the time when Susana Hahn and Cathy Guerra were in a position of ownership and control of Core. The disqualifications of Texas Natural Resources Code §91.114 attach where a final order has determined that a violation was committed, but the date of the final order has no necessary relationship to the issue of *when* a violation was committed. A violation is committed on the day of its inception and on each subsequent day the violation continues. The fact that the final orders in Oil & Gas Docket Nos. 03-0233966 and 03-0235020 did not become administratively final until 2003 and 2004, respectively, does not mean, for the purposes of Texas Natural Resources Code §91.114, that the violations in these dockets were not committed on earlier dates.

⁶ The one exception is the Koch, T. F. NCT-1, Well No. 4 (RRC ID No. 113052), with respect to which the Form P-4 was approved December 18, 2001, effective January 1, 2002.

⁷ Susana Hahn was also a director of Core, as evidenced by her resignation as such on December 15, 2001, but there is no evidence as to when she first became a director.

⁸ When Cathy Guerra was first elected as an officer of Core is not disclosed by the evidence. Guerra was also a director of Core, as evidenced by her resignation as such on December 15, 2001, but the date on which she first became a director is also undisclosed.

⁹ Both Susana Hahn and Cathy Guerra testified that Guerra was never an owner of Core.

What makes the difference in this case is that the uncontroverted evidence establishes that Susana Hahn and Cathy Guerra ceased to be persons in a position of ownership or control of Core *before Core became the operator* of the leases and wells involved in Oil & Gas Docket Nos. 03-0233966 and 03-0235020. The violations in these dockets could not have been committed by Core during the period when Susana Hahn and Cathy Guerra were in a position of ownership or control of Core. It is therefore legally impossible that the disqualifications of Texas Natural Resources Code §91.114 attached to Susana Hahn and Cathy Guerra by reason of the violations in these dockets.¹⁰

The Commission is not barred, under Texas Natural Resources Code §91.114, from accepting an organization report or application for permit or from approving a certificate of compliance for an organization owned or controlled by Susana Hahn and/or Cathy Guerra *based on the violations found to have been committed by Core in Oil & Gas Docket Nos. 03-0233966 and 03-0235020*.

On the other hand, the examiner concludes that the request of Susana Hahn and Cathy Guerra that they be removed as officers of Core from the Commission's records should be denied. The evidence shows that these were persons who served as officers of Core at the time of Core's last approved Form P-5 and prior thereto. The examiner is not advised as to whether there is any likelihood of a future enforcement proceeding against Core for violations that were committed by Core during the period when Susana Hahn and/or Cathy Guerra were in a position of ownership or control. In any event, expunging from Commission records the names of Susana Hahn and Cathy Guerra as officers of Core is not necessary to address the present disqualifications of these persons under Texas Natural Resources Code §91.114 based on the Commission's final orders in Oil & Gas Docket Nos. 03-0233966 and 03-0235020 or any future question which may arise about their disqualifications by reason of violations committed by Core after December 15, 2001.

Based on the record in this case, the examiner recommends that the Commission adopt the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Susana Hahn, Cathy Guerra and the bankruptcy trustee for Core E & P Corp. were given at least ten (10) days notice of this proceeding. In addition, Susana Hahn and Cathy Guerra appeared at the hearing in person and through their attorney and presented evidence.
2. The Commission heretofore has considered that pursuant to Texas Natural Resources Code §91.114, the Commission is barred from accepting an organization report or application for permit

¹⁰ After the close of the hearing, Enforcement filed a written closing statement stating general agreement with this proposition.

or from approving a certificate of compliance for an organization owned or controlled by Susana Hahn and/or Cathy Guerra, based on violations of Commission rules relating to safety and the prevention or control of pollution found to have been committed by Core E & P Corp. (“Core”) in Oil & Gas Docket Nos. 03-0233966 and 0235020.

3. Susana Hahn was in a position of ownership or control of Core from the inception of the company, but at least from February 22, 1999, through December 15, 2001. Susana Hahn ceased to be in a position of ownership or control of Core on December 15, 2001.
 - (a) Susana Hahn was the record owner of 100% of the stock of Core from the date of the company’s inception until December 15, 2001.
 - (b) Susana Hahn was Vice President of Core from at least June 25, 1999, when Core first filed a Form P-5 Organization Report with the Commission, until December 15, 2001. The Form P-5 filed by Core on June 25, 1999, stated that Core Exploration & Production Corporation was a name change from Core Energy Corporation. Core Energy Corporation first filed a Form P-5 with the Commission on February 22, 1999, and listed Susana Hahn as Vice President of the company.
 - (c) Forms P-5 for Core filed with the Commission on June 25, 1999, July 25, 2000, July 11, 2001, and November 1, 2001, listed Susana Hahn as Vice President of Core.
 - (d) Susana Hahn was a director of Core until December 15, 2001.
 - (e) On December 15, 2001, Susana Hahn resigned as an officer and director of Core and transferred all of Core’s stock to Michael Keith Hahn. Her resignation as a director and her transfer of Core’s stock to Michael Keith Hahn are recorded in minutes of a December 15, 2001, meeting of Core’s shareholders. Her resignation as an officer is memorialized by a December 21, 2001, letter she sent to the State Comptroller notifying the Comptroller of her resignation.
4. Cathy Guerra first became associated with Core in 1998, and was in a position of ownership or control of Core from at least June 18, 2001, until December 15, 2001. Cathy Guerra ceased to be in a position of ownership or control of Core on December 15, 2001.
 - (a) On June 18, 2001, Core’s President signed a Form P-5, which was filed with the Commission on July 11, 2001, listing Cathy Guerra as Secretary/Treasurer of Core.
 - (b) Cathy Guerra was a director of Core until December 15, 2001.

- (c) On December 15, 2001, Cathy Guerra resigned as an officer and director of Core. Her resignation as a director is recorded in minutes of a December 15, 2001, meeting of Core's shareholders. Her resignation as an officer is memorialized by a December 21, 2001, letter she sent to the State Comptroller notifying the Comptroller of her resignation.
- 5. Susana Hahn and Cathy Guerra severed all association with Core after December 15, 2001, with the exception that Cathy Guerra continued to perform certain contract data processing work for Core until early 2003. Cathy Guerra was not an employee of Core after December 15, 2001.
- 6. Core became the operator of the leases and wells involved in Oil & Gas Docket Nos. 03-0233966 and 03-0235020 by Form P-4 (Producer's Transportation Authority and Certificate of Compliance) transfers approved by the Commission on December 17-18, 2001, effective January 1, 2002.
- 7. The violations of Commission rules relating to safety and the prevention or control of pollution found to have been committed by Core in Oil & Gas Docket Nos. 03-0233966 and 03-0235020 were not committed by Core during the period of time when Susana Hahn and/or Cathy Guerra were in a position of ownership or control of Core.

CONCLUSIONS OF LAW

- 1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
- 2. All things necessary to the Commission attaining jurisdiction have occurred.
- 3. Texas Natural Resources Code, §91.114(a) bars the Commission, except as provided in §91.114(d), from accepting an organization report required under Texas Natural Resources Code §91.142 or an application for a permit under Chapters 85 and 91 of the Texas Natural Resources Code, or Chapters 26, 27, or 29 of the Texas Water Code, or from approving a certificate of compliance under Texas Natural Resources Code §85.161, for an organization having a person who holds a position of ownership or control who has within the seven years preceding the date on which the report, application, or certificate is filed, held a position of ownership or control in another organization, and during that period of ownership or control, the other organization violated a statute or Commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution.
- 4. Pursuant to Texas Natural Resources Code §91.114(b) an organization has committed a violation if: (a) a final judgment or final administrative order finding the violation has been entered against the organization and all appeals have been exhausted; or (b) the Commission and the organization have

entered into an agreed order relating to the alleged violation.

5. If a final judgment or final administrative order finding a violation of a statute or Commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution has been entered and all appeals have been exhausted, or the Commission and an organization have entered into an agreed order relating to the alleged violation, for the purposes of Texas Natural Resources Code §91.114(a), a violation is committed by an organization on the date of inception of the violation and on each subsequent day the violation continues.
6. The Commission is not barred under Texas Natural Resources Code §91.114(a) from accepting an organization report required under Texas Natural Resources Code §91.142 or an application for a permit under Chapters 85 and 91 of the Texas Natural Resources Code or Chapters 26, 27, or 29 of the Texas Water Code, or from approving a certificate of compliance under Texas Natural Resources Code §85.161, from an organization, other than Core E & P Corp., in which Susana Hahn and/or Cathy Guerra hold a position of ownership and control, based solely on violations found to have been committed by Core E & P Corp. in the Commission's final orders in Oil & Gas Docket Nos. 03-0233966 and 03-0235020.
7. The request of Susana Hahn and Cathy Guerra that their names be removed from Commission records as officers of Core E & P Corp. should be denied because these were persons who served as officers of Core E & P Corp. at the time of Core's last approved Form P-5 Organization Report filing and through December 15, 2001.

RECOMMENDATION

The examiner recommends that the Commission enter the attached final order, ordering that the Commission's Final Orders in Oil & Gas Docket Nos. 03-0233966 and 03-0235020 shall not be considered to bar the Commission, under the provisions of Texas Natural Resources Code §91.114(a), from accepting an organization report or application for permit, or from approving a certificate of compliance, for an organization, other than Core E & P Corp., in which Susana Hahn and/or Cathy Guerra hold a position of ownership or control, and that, otherwise, the application of Susana Hahn and Cathy Guerra is denied.

Respectfully submitted,

James M. Doherty
Hearings Examiner

